

July 3, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Protecting Consumers From Unauthorized Carrier Changes and
Related Unauthorized Changes; CG Docket No. 17-169**

Dear Ms. Dortch:

On July 3, 2017 I spoke with Zenji Nakazawa, Public Safety and Consumer Protection Adviser to Chairman Pai, with regard to the above captioned matter.

I observed that the draft NPRM appears to imply that the Commission's existing slamming and cramming rules apply to CMRS and interconnected voice over IP (VOIP) services. But the language of the NPRM does not explicitly state whether the Commission intends to apply its proposed rules to CMRS or interconnected VOIP services. Paragraph 19 solicits comment on why the Commission receives fewer complaints with regard to interconnected VOIP and CMRS than it does with regard to legacy LEC services. This implies that the Commission believes that the existing rules apply to CMRS and interconnected VOIP, since the natural answer is "there are fewer complaints because the Commission's rules do not expressly cover either CMRS or interconnected VOIP."

The Current State of the Law Is Complicated.

In 2009, the Consumer and Government Affairs Bureau (CGB) rejected a slamming complaint against Mediacom, a provider of facilities-based interconnected VOIP services, on the grounds that the FCC had not explicitly extended its anti-slamming rules to interconnected VOIP carriers.¹ In its 2012 *Report and Order and Further Notice of Proposed Rulemaking* on cramming² the Commission declined to extend formal rules against cramming to CMRS services, but did state that CMRS services are subject to the general prohibition on cramming and to the

¹ See Mediacom, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, *Order on Reconsideration* 24 FCC Rcd 5697 (CGB 2009). See also *Verizon Slamming Order*, 28 FCC Rcd 7244 (CGB 2013). The *Verizon Slamming Order*, noted that the Commission had sought comment on application of slamming rules to VOIP services generally in the *IP Enabled Services* Proceeding. See *IP-Enabled Services*, WC Docket No. 04-36, *Notice of Proposed Rulemaking*, 19 FCC Rcd 4863, 4910-11, Par. 71-72 (2004).

² Empowering Consumers To Prevent and Detect Billing for Unauthorized Charges (Cramming), CG Docket No. 11-116; Consumer Information and Disclosure, CG Docket No. 09-158; Truth-in-Billing and Billing Format, CG Docket No. 98-170, *Report & Order and FNPRM*, 27 FCC Rcd 4436 (2012).

Truth-in-Billing obligations pursuant to 47 U.S.C. §201(b) and 47 U.S.C. §258. The Commission did not impose any rules on interconnected VOIP services. The Commission sought further comment with regard to both CMRS and interconnected VOIP services in the *FNPRM*. The *FNPRM* remains pending, and the Commission has taken no further action with regard to either CMRS services or interconnected VOIP.

Request To Clarify NPRM And Its Relationship With Other Pending Dockets.

Nothing in the proposed *NPRM* as drafted directly contradicts any of the above. But the Commission's proposal, particularly with regard to interconnected VOIP, remains unclear. The Commission has clear authority under its ancillary authority to apply rules regarding slamming and cramming to interconnected VOIP services.³ Additionally, as noted in both the draft *NPRM* and the 2012 *Report and Order*, CMRS providers are subject to the general duty against slamming and cramming under Sections 201(b) and 258.

I therefore recommended that the Commission should clarify that it intends to impose the proposed rules on traditional LEC services, CMRS services, and interconnected VOIP services.⁴ At a minimum, the Commission should solicit comment on whether to extend the proposed rules to these services. Additionally, the Commission should clarify the relationship between the new docket, CG 17-169, the pending *FNPRM* in Docket No. CG 11-116, and the *IP Enables Services* proceeding.

In accordance with Section 1.1206(b) of the Commission's rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

Respectfully submitted,

/s/ Harold Feld

Harold Feld

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³ See *IP Enabled Services*, *supra* n.1. See also *Rural Call Completion*, WC Docket No. 13-39, *Report & Order*, 28 FCC Rcd 16154 (2013) (applying ancillary jurisdiction to interconnected VOIP service); *IP-Enabled Services*, WC Docket No. 04-36, *Report & Order*, 24 FCC Rcd 6039 (2009) (requiring interconnected VOIP providers to comply with streamlined discontinuance notices).

⁴ If nothing else, the Commission should apply the anti-slamming and anti-cramming rules to facilities based providers of interconnected VOIP services, which are indistinguishable to consumers from traditional LEC services.

Cc: Zenji Nakazawa